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| 10/051,210      | 01/16/2002  | Thomas William Wielkopolski | 741004.1005         | 7961             |

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EXAMINER

DEPUMPO, DANIEL G

ART UNIT PAPER NUMBER

3611

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/051,210

Applicant(s)

WIELKOPOLSKI, THOMAS  
WILLIAM

Examiner

Daniel G. DePumpo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 9-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. Applicant's election of species I (Fig. 1, claims 1-8, 18 and 19 allegedly readable thereon) in Paper No. 11 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In response to the election requirement, applicant urges that claim 8 is a generic. Applicant states (remarks page 2) that "claim 8 recites a manually-operable member (9, 30) mounted for substantially rectilinear reciprocating movement, the manually-operable member (9, 30) being attached to a lever or shaft (6, 32) mounted for axial reciprocating movement. In view of applicant's remarks in this regard, claim 8 fails to comply with 35 U.S.C. 112, first paragraph for the reasons given below.

Claim 8 specifically recites "said manually-operable member is attached to a shaft that is mounted for axial reciprocating movement" (emphasis added). This limitation is clearly drawn to the embodiment depicted in fig. 4. As disclosed at page 5, lines 21-25, an "alternative drive system is shown in Figs. 4 to 7 ... the pedals 30 [manually-operable members] are attached to the lower ends of two parallel pedal shafts 32, which are mounted for axial movement ..." (emphasis added). The examiner does not consider lever 6 (fig. 1) to be "mounted for axial reciprocating

movement”, nor is this disclosed in applicant’s specification. While it is true that lever 6 may theoretically move with a very slight axial component, the examiner does not consider applicant’s new interpretation of the embodiment of fig. 1 to be a reasonable in light of applicant’s specification.

If applicant agrees that claim 8 does not reasonably read on the elected embodiment, such should be indicated in response to this office action. Claim 8 would then be withdrawn from further consideration.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In view of the discussion in paragraph 3 above, the recitation of a “shaft mounted for axial reciprocating movement” is vague and indefinite. Applicant urges that lever 6 is “mounted for axial reciprocating movement”. The examiner considers this interpretation to be inconsistent with applicant’s specification. In view of this inconsistency, the scope of claim 8 cannot be determined.

If applicant agrees that claim 8 does not reasonably read on the elected embodiment, such should be indicated in response to this office action. Claim 8 would then be withdrawn from further consideration.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4, 8 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kludszuweit (DE 44 04 831).

In fig. 7, Kludszuweit discloses a drive system having the structure as claimed. The system includes a manually-operable member 1.1, a first lever 2, a second lever 1, a tie rod 3, and a hydraulic pump 4. Regarding claim 8, “shaft” 1 is consider to be “mounted for axial reciprocating movement” to the same degree as lever 6 of the elected embodiment.

8. Claim 8 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Christiansen ‘911. See fig. 2.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3, 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kludszuweit in view of Bortolin.

As set forth above, Kludszuweit teaches substantially all that is claimed. Although it is likely that Kludszuweit includes two lever systems and a hydraulic motor, this is not clear from the German reference. Bortolin, however, discloses a hydraulic drive train including two lever systems (col. 3, line 6) and a hydraulic motor 47. It would have been obvious to modify Kludszuweit, by including two lever systems and a hydraulic motor. It would have been obvious

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to modify Kludszuweit by including two lever systems and a hydraulic motor, to provide an efficient drive means.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chase '724, Kohleb, Lenhardt, Chase '173, Huss, Warrick, Sato '000, and Sato '143 disclose various devices having features in common with the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel G. DePumpo whose telephone number is 703 308-1113.

The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703 308 1113. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.



Daniel G. DePumpo  
Primary Examiner  
Art Unit 3611

dgd  
9/20/03